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State v. Hiebert Appellant's Brief Dckt. 41402

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IN THE SUPREME COURT OF THE
STATE OF IDAHO

STATE OF IDAHO,)	DOCKET NO. 41402-2013
)	
Plaintiff-Respondent,)	
)	Bonner County Case
v.)	No. CR-2011-3170
)	
DENNIS EARL HIEBERT,)	
)	APPELLANT'S BRIEF
Defendant-Appellant.)	
_____)	
)	

APPELLANT'S BRIEF

Appeal from the District Court of the First Judicial District of
the State of Idaho, in and for the County of Bonner

THE HONORABLE JOHN T. MITCHELL PRESIDING, DISTRICT JUDGE, and
THE HONORABLE BENJAMIN SIMPSON PRESIDING, DISTRICT JUDGE

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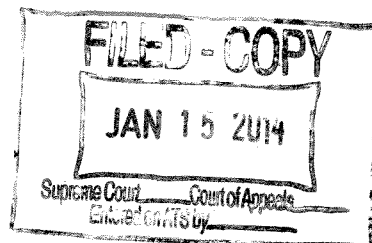


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STATEMENT OF CASE

(i) Nature of Case.

Law enforcement entered the Defendant's real property located in Bonner County, Idaho to search for suspects with outstanding felony arrest warrants believed to be on the Defendant's real property. While looking for the people with outstanding felony arrest warrants, law enforcement left the normal traveled vantage point and performed a warrantless search of a vehicle hidden from plain site. This warrantless search was used as a basis to secure search warrants for the Defendant's real property. When the search warrants were served stolen property and methamphetamine were located on the Defendant's real property. Defendant contends that the initial warrantless search of the real property was in violation of the State of Idaho and United States Constitutions and asks the Court to reverse the District Court and exclude all the evidence.

(ii) Course of Proceedings.

An Information was filed charging the Defendant with seven (7) counts of grand theft by possession of stolen property and with one (1) count of Possession of methamphetamine.

The Defendant filed a Motion To Suppress (R. Vol. I, Pgs 167-168) and exclude all of the State's evidence on the basis that all of evidence was gained as a result of the initial warrantless search. Further, the information

obtained in the initial warrantless search led to the issuance of search warrant(s). The search warrant(s) in this case were wrongfully issued and defective.

The Court entered a Memorandum Decision RE: Defendant's Motion To Suppress and denied the Defendant's Motion to Suppress. (R. Vol. II, Pgs. 260-269).

After denial of the Motion to Suppress, the parties entered into a Plea Agreement pursuant to I.C.R. 11 and I.C.R. 38 (R. Volume II, P. 298-301).

Pursuant to the Plea Agreement, the Defendant then entered a Conditional Plea of Guilty reserving the right, on appeal from the judgment, to review the adverse ruling made on the Defendant's Motion to Suppress (R. Vol. II, P. 296-297) to Count I of the Third Amended Information, (R. Vol. II, P. 294-295) possession of methamphetamine. Count I of the Third Amended Information was originally Count 8 of the Information.

The District Court approved the Conditional Plea reserving the Defendant's right to appeal. (Tr. P. 27, L. 21-24; August 26, 2011 Sentencing Hearing).

(iii) Statement of Facts.

Bonner County Detective Strangio received information that two felony warrant suspects were at the Hiebert property. On June 22, 2012 Detective Strangio was conducting a follow up investigation at the Hiebert property to look for the two felony warrant suspects. (Tr. P.8 L.14-24; October

22, 2012 Motion to Suppress Hearing) .

Without any warrant Detective Strangio entered the Hiebert property and parked near the residence and what was identified as a shop. (Tr. P.9 L.1-9; October 22, 2012 Motion to Suppress Hearing) (Def's Ex. B) .

Detective Strangio walked past a stop sign, no thru traffic sign and a no trespassing sign and followed the travel route through the Hiebert property illustrated in Defendant's Exhibit A. (Tr. P.17-18; October 22, 2012 Motion to Suppress Hearing) (Def's Ex. A) .

At a point illustrated on "Exhibit A", Detective Strangio, noticed a Suzuki vehicle some distance off the travel route which caught his attention. Looking from the travel route, Detective Strangio noticed the Suzuki appeared inconsistent with the other vehicles on the property due to the look and appearance and because the hood was popped and the vehicle did not have any license plates on the front of it. (Tr. P. 19, L5-17; October 22, 2012 Motion to Suppress Hearing) .

Defendant's Exhibit G showed the limited view of the vehicle that Strangio had from the travel way during his warrantless entry upon the Hiebert property. (Tr. P. 23-24; October 22, 2012 Motion to Suppress Hearing) .

Strangio testified that the vehicle in question was parked "out of visual range from the roadway or anybody conducting normal course of business on that property". (Tr.

P. 11, L. 17-24; June 22, 2011 Application for Search Warrant). Strangio also described that the vehicle was "secreted from public view or a view from anybody entering onto the property in itself" (Tr. P. 18, L. 5-11, June 22, 2011 Application for Search Warrant). (See also Tr. P. 24-25, L1-7; p28, L9-21; October 22, 2012 Motion to Suppress).

Strangio did not think he had probable cause to ask for a warrant based upon the information that he possessed at that time. (Tr. P. 31, L9-18; October 22, 2012 Motion to Suppress) Strangio could not pass it up, he left the travel route to inspect the vehicle closer. (Tr. P. 25, L. 1-25; Tr. P. 31-32; October 22, 2012 Motion to Suppress). At that time, Strangio obtained and ran the VIN number and determined the vehicle was stolen. (Tr. P. 32, L. 16-19).

Strangio was granted a warrant to search the Hiebert property based upon the information he gained while on his warrantless entry onto the Hiebert Property. Additional evidence was gathered based upon execution of the search warrants and amended search warrants.

Dennis Hiebert contends that all of the evidence gained in this case is direct result of the warrantless search by Detective Strangio on June 22, 2011 of the Hiebert property and request that all evidence be suppressed.

Detective Strangio also testified that although he had applied for and was granted a warrant for 3700 Hwy 41, Oldtown, Idaho, the actual address at the Hiebert property

was 37000 Hwy 41 Oldtown, Idaho.

ISSUES PRESENTED ON APPEAL

a. Whether the District Court erred in denying the Defendant's Motion To Suppress?

b. Whether all of the evidence in the case was the result of a warrantless entry and search?

c. Whether the District Court erred in its analysis, decision, facts and in the entry of the Memorandum Decision RE: Defendant's Motion To Suppress entered November 28, 2012?

ARGUMENT

I. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a suppression motion is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. State v. Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App.1996).

II. When Detective Strangio Failed To Restrict His Movements To Places Where Ordinary Visitors Could Be Expected To Go He Exceeded The Authority Under The Open View Doctrine

Where a warrant is predicated on information discovered during a previous warrantless search, the State must show that the evidence supporting the warrant was not itself unlawfully obtained. See State v. Johnson, 110 Idaho 516,

526, 716 P.2d 1288, 1298 (1986). That is, the State bears the burden of demonstrating that the initial, warrantless search fell within a well-recognized exception to the warrant requirement. State v. Tietz, 145 Idaho 112, 116.

Detective Strangio made a warrantless entry onto the Hiebert property and failed to restrict his movements to places where ordinary visitors could be expected to go as a result the, observations he made after departing from such vantage points are unlawful.

The Tietz Court correctly restated the law regarding curtilage and the open view doctrine, as follows:

The Fourth Amendment to the United States Constitution and Article I, Section 17 of the Idaho Constitution each guarantee "[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures." These provisions protect a person's expectation of privacy which society is prepared to recognize as reasonable. *Oliver v. United States*, 466 U.S. 170, 177, 104 S.Ct. 1735, 1740, 80 L.Ed.2d 214, 223 (1984); *State v. Donato*, 135 Idaho 469, 471, 20 P.3d 5, 7 (2001); *State v. Webb*, 130 Idaho 462, 465, 467, 943 P.2d 52, 55, 57 (1997). These constitutional safeguards of the privacy of "houses" extend to the curtilage of a residence, which is the area or buildings immediately adjacent to a home that a reasonable person would expect to remain private, even though it is accessible to the public. *United States v. Dunn*, 480 U.S. 294, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987); *Webb*, 130 Idaho at 465, 943 P.2d at 57; *State v. Cada*, 129 Idaho 224, 923 P.2d 469 (Ct.App.1996).

Interpreting the Idaho Constitution, our courts define "curtilage" more broadly than does the United States Supreme Court for Fourth Amendment purposes, to include outbuildings and drives within the areas protected from unreasonable searches. *Webb*, 130 Idaho at 467, 943 P.2d at 57;

Cada, 129 Idaho at 230-32, 923 P.2d at 475-77.

Even under Idaho constitutional jurisprudence, however, not all entries by law enforcement officers onto the curtilage of a home infringe upon constitutionally protected expectations of privacy. Under the open view doctrine, when the police come onto private property to conduct an investigation or for some other legitimate purpose and restrict their movements to places where ordinary visitors could be expected to go, observations from such vantage points are lawful. *Id.*; *State v. Clark*, 124 Idaho 308, 312-13, 859 P.2d 344, 348-49 (Ct.App.1993); *State v. Rigoulot*, 123 Idaho 267, 272, 846 P.2d 918, 923 (Ct.App.1992). Direct access routes to the house, including driveways, parking areas, and pathways to the entry, are areas to which the public is impliedly invited. Police officers restricting their activity to such areas are permitted the same intrusion and the same level of observation as would be expected from a reasonably respectful citizen. *Cada*, 129 Idaho at 232, 923 P.2d at 477; *Clark*, 124 Idaho at 313, 859 P.2d at 349. The scope of the open view doctrine is limited, however, by the implied invitation to enter. Consequently, "a substantial and unreasonable departure from the normal access route will exceed the scope of the implied invitation and intrude upon a constitutionally protected privacy interest." *Clark*, 124 Idaho at 314, 859 P.2d at 350.

What is lawfully seen in open view may furnish probable cause for a warrant. *Doe v. State*, 131 Idaho 851, 854, 965 P.2d 816, 819 (1998).

Detective Strangio did depart the normal access route or vantage point where he observed the vehicle to obtain the VIN number for the vehicle. The VIN was not in open view from the normal travel route and the evidence should be suppressed. The information obtained in the warrantless search by Detective Strangio when he left the travel route led to the issuance of a search warrant and the discovery of

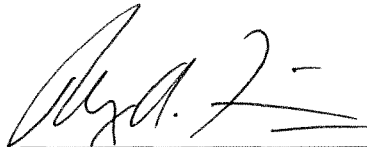
all of the State's evidence in this case. The District Court erred when it denied the Defendant's Motion to Suppress.

The search warrant(s) in this case were wrongfully issued and are defective and give the wrong address for the place to be searched. The incorrect address is sufficient to suppress the evidence gained by the Warrant(s).

CONCLUSION

All evidence obtained as a result of Strangio's warrantless entry upon the Heibert property should have been excluded. The District Court's Memorandum Opinion Re: Defendant's Motion to Suppress should be reversed and all of the State's evidence should be excluded.

RESPECTFULLY SUBMITTED this 13 day of January, 2014.

A handwritten signature in black ink, appearing to read "Rex A. Finney", written over a horizontal line.

Rex A. Finney
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of January, 2014, two (2) true and correct copies of the foregoing, were served by deposit in the U.S. Mail, postage prepaid, and were addressed to:

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